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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/533,473	04/29/2005	Carlos F. Fuente	GB920020085US1	4063
46335	7590	01/31/2008	EXAMINER	
DILLON & YUDELL, LLP			LOONAN, ERIC T	
8911 N CAPITAL OF TEXAS HWY			ART UNIT	PAPER NUMBER
SUITE 2110			2189	
AUSTIN, TX 78759				
MAIL DATE		DELIVERY MODE		
01/31/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

SJA

**Advisory Action  
Before the Filing of an Appeal Brief**

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/533,473	FUENTE ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Eric Loonan	2189

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

THE REPLY FILED 02 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
- a)  The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) ~~fourteen~~ (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a)  They raise new issues that would require further consideration and/or search (see NOTE below);
  - (b)  They raise the issue of new matter (see NOTE below);
  - (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_

13.  Other: \_\_\_\_\_.

*Reginald G. Bragdon*

REGINALD BRAGDON  
SUPERVISORY PATENT EXAMINER  
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Continuation of 11. does NOT place the application in condition for allowance because:

With respect to applicant's argument that the prior art of record does not teach Claim 7's step of "designating remaining nodes within said shared storage system client nodes" on the basis of Figure 1's depiction of multiple primary systems, the examiner further directs the applicant to Column 8, Lines 3 -25 of Ohran where the primary system is further described as being "one or more" systems.

With respect to applicant's argument that the prior art of record does not teach Claim 7's step of "a host I/O request arriving at one of said client nodes", the examiner directs the applicant again to Column 8, Lines 3 -25 of Ohran where the primary system can be a "stand alone system". Thus, given the broadest reasonable interpretation of a "host", the examiner considers the primary system could include one such instance of a host.

With respect to applicant's argument that the prior art of record does not teach Claim 7's step of "in response to a host I/O request", the examiner directs the applicant to Column 20, Lines 50 -65 of Ohran which notes that step 100 proceeds after initiation of the backup system.

With respect to applicant's argument that the prior art of record does not teach Claim 7's step of "suspending said I/O request", the examiner interprets, in the broadest reasonable interpretation of a "suspension", the process of identifying a logically consistent state for the purposes of establishing a snapshot as a suspension of the I/O request (Column 20, Lines 50 -65).

With respect to applicant's argument that the prior art of record does not teach Claim 7's step of "placing a lock record by said owner node against an appropriate metadata for said region of storage associated with said I/O request if said region of storage associated with said I/O request has not been copied", the examiner respectfully disagrees with applicant's stance that taking a snapshot of the data is completely different from "placing a lock record" on the data. The examiner interprets, in the broadest reasonable interpretation of a "lock", that a snapshot acts as a lock and preserves the data from changes.